

EXHIBIT 2

PART 1

1 UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF ALABAMA
3 NORTHERN DIVISION

4
5 PATRICK BAILEY,)
6)
7 Plaintiff,)
8 VS.) CASE NO:
9 MILTOPE CORPORATION,) 2:05-CV-1061-MEF-DRB
10) DEPOSITION OF:
11 Defendant.) PATRICK BAILEY

12 VOLUME 2
13
14 S T I P U L A T I O N S

15 IT IS STIPULATED AND AGREED, by and
16 between the parties through their
17 respective counsel, that the deposition
18 of:

19 PATRICK BAILEY,
20 may be taken before LeAnn Maroney, Notary
21 Public, State at Large, at the law offices
22 of Johnston, Barton, Proctor & Powell, 2900
23 AmSouth/Harbert Plaza, Birmingham, Alabama,

Page 212	Page 214
1 on September 29, 2006, commencing at	1
2 approximately 10:00 a.m.	2
3	3
4 IT IS FURTHER STIPULATED AND AGREED	4
5 that the signature to and reading of the	5
6 deposition by the witness is waived, the	6
7 deposition to have the same force and	7
8 effect as if full compliance had been had	8
9 with all laws and rules of Court relating	9
10 to the taking of depositions.	10
11	11
12 IT IS FURTHER STIPULATED AND AGREED	12
13 that it shall not be necessary for any	13
14 objections to be made by counsel to any	14
15 questions, except as to form or leading	15
16 questions, and that counsel for the parties	16
17 may make objections and assign grounds at	17
18 the time of the trial, or at the time said	18
19 deposition is offered in evidence, or prior	19
20 thereto.	20
21 ***	21
22	22
23	23
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1 A P P E A R A N C E S	1 I, LeAnn Maroney, a Court
2 FOR THE PLAINTIFF:	2 Reporter of Birmingham, Alabama, and a
3 DERRICK BLYTHE	3 Notary Public for the State of Alabama at
4 Attorney at Law	4 Large, acting as commissioner, certify that
5 126 Marshall Street	5 on this date, pursuant to Rule 30 of the
6 Alexander City, Alabama 35010	6 Alabama Rules of Civil Procedure and the
7	7 foregoing stipulation of counsel, there
8 FOR THE DEFENDANT:	8 came before me on September 29, 2006,
9 HEATHER F. LINDSAY	9 PATRICK BAILEY, witness in the above cause,
10 Attorney at Law	10 for oral examination, whereupon the
11 Johnston, Barton, Proctor & Powell	11 following proceedings were had:
12 2900 AmSouth/Harbert Plaza	12 PATRICK BAILEY,
13 Birmingham, Alabama 35203	13 being first duly sworn, was examined and
14	14 testified as follows:
15	15 EXAMINATION BY MS. LINDSAY:
16 I N D E X	16 Q Mr. Bailey, we meet again.
17 MS. LINDSAY: 215-319; 356-385	17 Thanks for coming back. We'll just finish
18 MR. BLYTHE: 319-356	18 up this deposition. Hopefully it won't
19	19 take very long.
20	20 I have some reminders for you.
21	21 Try to remember to say yes or no rather
22	22 than uh-huh or huh-uh. You and I sometimes
23	23 interrupt each other accidentally. I'll

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3

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<p>1 try not to do that. If you would, try to 2 remember just to answer my question. And 3 if there's something that you haven't had a 4 chance to discuss, I'm sure your lawyer 5 will have a chance to ask you those 6 questions at the end.</p> <p>7 A Okay.</p> <p>8 Q I have some notes just based on 9 things I wasn't able to wrap it up last 10 time. These questions may bounce around in 11 different areas, so just bear with me.</p> <p>12 A Okay.</p> <p>13 Q One question I have is you 14 mentioned having a legal dispute with a 15 Mr. McCorkle and Mr. O'Brien. Do you 16 remember that?</p> <p>17 A Correct.</p> <p>18 Q Were y'all in the same band 19 together?</p> <p>20 A No.</p> <p>21 Q As I recall your testimony, the 22 dispute was over something to do with 23 music.</p>	<p>1 Q That was the band you were in at 2 Auburn, right?</p> <p>3 A Correct.</p> <p>4 Q Another follow-up question about 5 a time period other than your employment 6 with Miltope. When you were in the Rat 7 Race prior to your working at Miltope, were 8 you getting paid for your performances with 9 that band?</p> <p>10 A With Rat Race?</p> <p>11 Q Yes.</p> <p>12 A Yes.</p> <p>13 Q And I believe that this was 14 probably in the year 1995 or 1996. Is that 15 correct?</p> <p>16 A It was prior to my initial 17 employment with Miltope for a little less 18 than one year. It was almost a whole year.</p> <p>19 Q And this had happened right 20 after your mother passed away, correct?</p> <p>21 A Correct.</p> <p>22 Q Was the income you received for 23 the Rat Race performances your only source</p>
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<p>1 A Correct.</p> <p>2 Q Were you in bands with each one 3 of them?</p> <p>4 A No.</p> <p>5 Q So, you were not in a band with 6 McCorkle?</p> <p>7 A No.</p> <p>8 Q And you were not in a band with 9 O'Brien?</p> <p>10 A No.</p> <p>11 MR. BLYTHE: Off the record for 12 a second.</p> <p>13 (Discussion held off the record)</p> <p>14 Q Can you tell me briefly what 15 that dispute was about?</p> <p>16 A Totally separate engagements.</p> <p>17 They had hired a band I was in to play, and 18 they did not pay. Therefore, we had to 19 seek some sort of action to be paid.</p> <p>20 Q And when you say we, which band 21 were you acting on behalf of when you asked 22 McCorkle and O'Brien to pay?</p> <p>23 A Imposter.</p>	<p>1 of income in that time period?</p> <p>2 A Yes. I was married during that 3 time, also.</p> <p>4 Q And your wife was working?</p> <p>5 A Yes.</p> <p>6 Q Just for clarification, when you 7 interviewed at Miltope with Mr. Ed Crowell, 8 what did you understand his title to be?</p> <p>9 A I don't recall.</p> <p>10 Q Do you recall Mr. Ed Crowell 11 interviewing you prior to both terms of 12 employment at Miltope?</p> <p>13 A I'm not exactly sure about the 14 first term of employment. But the second 15 term of employment, I did speak to Mr. 16 Crowell.</p> <p>17 Q Do you recall receiving offer 18 letters from Mr. Ed Crowell for both terms 19 of employment?</p> <p>20 A I believe that's right.</p> <p>21 Q Did you understand him to be the 22 one to make the decision to hire you?</p> <p>23 A Yes.</p>

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<p>1 Q And was that understanding the 2 same both times you were employed at 3 Miltope, that Mr. Ed Crowell hired you both 4 times?</p> <p>5 A I believe that to be right.</p> <p>6 Q What did you understand Brian 7 Burkhead's position to be when you worked 8 at Miltope the second time?</p> <p>9 A The second time, my supervisor.</p> <p>10 Q Did you know what area he 11 supervised?</p> <p>12 A He supervised O&R and me.</p> <p>13 Q What does O&R stand for?</p> <p>14 A Overhaul and repair.</p> <p>15 Q When you say he also supervised 16 you, what area were you running?</p> <p>17 A I was the CAV administrator and 18 the government property administrator.</p> <p>19 Q Did you say CAV, C-A-V?</p> <p>20 A CAV, commercial asset 21 visibility.</p> <p>22 Q What does that mean to a regular 23 person like me?</p>	<p>1 described?</p> <p>2 A We had one area that was called 3 NAV IPC Mechanicsburg which was tracked in 4 CAV. That was the Navy ships. We had 5 another area that was NAV ICP Philadelphia 6 which was Navy planes. Those two were the 7 CAV items. The other items that we had 8 in-house were any and all other government 9 property, which would be Army, Air Force, 10 that kind of thing.</p> <p>11 Q So, there were two items that 12 fell within the CAV administrator title?</p> <p>13 A Two sections I would say would 14 be a better way to say it.</p> <p>15 Q And that would have been the 16 Mechanicsburg and --</p> <p>17 A Philadelphia.</p> <p>18 Q And then there was also a 19 separate administrative duty you had with 20 respect to other government property?</p> <p>21 A Correct.</p> <p>22 Q Could you tell me more about 23 what that entailed for you, this separate</p>
Page 221	Page 223
<p>1 A I was in charge of the computer 2 system that made it possible for the Navy 3 to view their assets in Miltope's 4 possession for repair.</p> <p>5 Q Was this a way that they could 6 keep track of the status on repair of their 7 property?</p> <p>8 A Exactly, and also for their 9 program managers and people of that nature 10 to be able to tell in what condition each 11 piece of material was. So, if they needed 12 a certain amount, they could look and see 13 how many we had and they could put an order 14 in for that amount or know that they had 15 that many there. And they could also check 16 the status on delivery orders that we had 17 in-house.</p> <p>18 Q When you listed your area, you 19 said CAV administrator and government 20 property, I believe.</p> <p>21 A Right.</p> <p>22 Q How was being over government 23 property different from what you just</p>	<p>1 administrative duty you had?</p> <p>2 A I was sent to school in Ohio for 3 that. That's the IND 101 that you see on 4 there.</p> <p>5 Q I got you.</p> <p>6 A And I was instructed in ways to 7 maintain and store and secure government 8 property. And I was trying to implement 9 some of the things that I had learned in 10 school, which would mean that the -- some 11 certain things I had to have a security 12 clearance for. Some things I had to be 13 able to show a secure storage for and a way 14 to track them when they were in-house.</p> <p>15 Q What type of property were you 16 having to track and store securely?</p> <p>17 A S-3 drives.</p> <p>18 Q What are S-3 drives?</p> <p>19 A Can I go off the record?</p> <p>20 (Discussion was held off the record.)</p> <p>21 Q Back on the record. With 22 respect to the other government property 23 you had to track and secure securely, that</p>

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5

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1 **would have been classified information, as**
 2 **far as you know?**

3 A Yes.

4 **Q What did you understand the**
 5 **position of Gabe Riesco to be?**

6 A He was the director of -- he was
 7 Brian's boss. So, he would have been the
 8 director of product support. And he was
 9 also a program manager of a program that I
 10 can't recall the name of right now. But he
 11 was Brian's -- Brian reported to him.

12 **Q And you reported to Brian,**
 13 **right?**

14 A Correct.

15 **Q Do you know who Gabe reported**
 16 **to?**

17 A I believe he would report to --
 18 I don't know if he reported directly to Ed
 19 or directly to the president of the
 20 company. I'm not sure. I don't know how
 21 that went.

22 **Q This is just a follow-up**
 23 **question here. The last time we were**

1 other than, you know, worry about
 2 everything that was going on. I got to go
 3 play and it was fun and I enjoyed it. It
 4 made me feel good, and then it was back to
 5 reality.

6 **Q When you talk about having a lot**
 7 **of responsibilities and going back to**
 8 **reality, you are referring to your dad's**
 9 **illness and your responsibilities as a**
 10 **single dad, right?**

11 A Right. That's a lot of work.

12 **Q I'm sure it is. And you are not**
 13 **referring to any other problem or issue**
 14 **when you are talking about this, are you?**
 15 **Was there anything else going on?**

16 A I would have to say that before
 17 that, you know, getting divorced. That was
 18 a great deal of emotional pressure. I had
 19 done everything for everyone else at that
 20 point. So, doing a little something for
 21 myself was kind of a well-needed thing or
 22 well deserved.

23 **Q Do you remember what date your**

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1 **together, you indicated that you were asked**
 2 **to join the McQueen Street Band for a**
 3 **reunion show in 2003. Do you remember that**
 4 **testimony?**

5 A Yes.

6 **Q And when you were talking about**
 7 **that, you said you were honored to be**
 8 **asked. Do you remember that?**

9 A Right.

10 **Q And you also said I believe**
 11 **something along the lines of with all that**
 12 **was going on, it was also something of an**
 13 **escape. Do you remember saying that?**

14 A Perhaps. Would you like me to
 15 clarify that?

16 **Q I was just going to ask you what**
 17 **you meant by all that was going on.**

18 A I had a lot of responsibilities,
 19 and my father's illness, my daughter. It
 20 was kind of like -- escape was a bad word.
 21 It was a very-much-needed temporary
 22 distraction. Not an ongoing one, but just
 23 a temporary distraction, something to do

1 **divorce was final?**

2 A I know the date. I don't
 3 remember what year. August 9th of -- I
 4 don't remember what year. That's bad.

5 **Q Was it the year prior to the**
 6 **issues with your dad, or had it been**
 7 **several years that you had been divorced**
 8 **from Melissa?**

9 A If you will give me a minute, I
 10 can tell you what year it is. If I could
 11 look -- I think I have a copy of my divorce
 12 decree.

13 **Q Don't refer to any notes that**
 14 **you don't want me to see.**

15 A If it's my divorce decree, it's
 16 public record. I think I've got a copy of
 17 that. So, it would be August -- does that
 18 say '03?

19 **MR. BLYTHE: '02.**

20 A '02. It was final on August the
 21 9th '02.

22 **Q Thanks for checking that.**

23 A No problem.

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<p>1 Q The last time we talked, you 2 said that prior to playing in Cold Hard 3 Truth, you played in a band with a friend. 4 Do you remember that testimony? What I'm 5 getting at is was there another band you 6 played in besides McQueen Street, Rat Race 7 and Cold Hard Truth?</p> <p>8 A Oh, sure. I've filled in with 9 bands. There was never any kind of 10 permanent situation. I played bass in a 11 band, but that was not a permanent 12 situation.</p> <p>13 Q So, since you left Miltope the 14 second time, you are saying that you filled 15 in with bands at various times but not on a 16 permanent basis?</p> <p>17 A Right.</p> <p>18 Q When you filled in with those 19 bands, did you receive some compensation 20 for those shows?</p> <p>21 A Sometimes. Most of the time, 22 yes, or I wouldn't -- I wouldn't have done 23 it had I not.</p>	<p>1 A At this moment, no.</p> <p>2 Q Have you actively pursued any 3 other options in the last couple of years?</p> <p>4 A Actively. I might have talked 5 to someone about something. But as far as 6 -- no. Actively, no.</p> <p>7 Q Is there any other work schedule 8 that you think would work better for your 9 family than what you are doing now?</p> <p>10 A I'm not sure.</p> <p>11 Q You haven't come up with a 12 different idea?</p> <p>13 A If the opportunity presented 14 itself, I might consider it and think about 15 it. But I don't dwell on that.</p> <p>16 Q Last time we talked about your 17 dad going to the Presbyterian church at 18 some time in his life. Does he still 19 attend church today?</p> <p>20 A No.</p> <p>21 Q Is he physically able to attend 22 church?</p> <p>23 A No.</p>
Page 229	Page 231
<p>1 Q Were you sometimes with the Jeff 2 Golden Band again?</p> <p>3 A No.</p> <p>4 Q Is it your testimony that your 5 income from filling in was not sufficient 6 to report to the IRS?</p> <p>7 A No, it wouldn't have been. Or I 8 was told by the accountant that it wouldn't 9 have been.</p> <p>10 Q You do have an accountant?</p> <p>11 A That filed taxes when I did, yes.</p> <p>12 Q The last time we talked, you 13 said that working two days a week with Cold 14 Hard Truth I believe you said is the best 15 arrangement considering your family 16 obligations. Do you remember that 17 testimony?</p> <p>18 A Well, I mean, under the 19 circumstances, it works. Something else 20 would probably work, too, you know.</p> <p>21 Q Are you pursuing any other 22 options that you think would work better 23 for your family?</p>	<p>1 Q And why is that? Can you tell 2 me something about his physical condition 3 that --</p> <p>4 A He sometimes cannot -- how do I 5 say that?</p> <p>6 MR. BLYTHE: Just say it.</p> <p>7 A There have been instances where 8 he has used the restroom on himself and 9 that kind of thing, and that would not be 10 something that I would want to put him 11 through.</p> <p>12 Q So, was there a time that you 13 stopped -- well, can you point to a time 14 when he stopped attending church for the 15 reason that you just described? In other 16 words, is there a time frame for when this 17 began?</p> <p>18 A When his dementia started, when 19 the Alzheimer's hit.</p> <p>20 Q I want to ask you about this 21 opportunity you had with Tom Bradley, who 22 was a program director. Do you remember 23 that?</p>

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7

<p>1 A Yes.</p> <p>2 Q As I understand it, you were 3 being asked to take on a job that would 4 have taken you away from home for about two 5 weeks; is that right?</p> <p>6 A Two weeks at a time is what I 7 was told.</p> <p>8 Q Two weeks at a time. And this 9 would be a different role within Miltope 10 that you were being asked to assume; is 11 that right?</p> <p>12 A Right.</p> <p>13 Q Were you being asked to do this 14 around the time that you were telling me 15 you were seeking leave?</p> <p>16 A It was prior to me seeking 17 leave.</p> <p>18 Q Do you remember the title of 19 that job?</p> <p>20 A I want to say that it was DPA 21 upgrade administrator or something of that 22 nature, something close to that. The 23 program was a DPA upgrade.</p>	<p>Page 232</p> <p>1 this. And I don't -- I don't know at that 2 point in time if they had taken it off the 3 table or not.</p> <p>4 Q In other words, do you think you 5 were still being encouraged to reconsider?</p> <p>6 A Yes.</p> <p>7 Q Did all this come up for the 8 first time after July of '03, or do you 9 remember?</p> <p>10 A After July of '03 when my father 11 was in the hospital the first time?</p> <p>12 Q Yes.</p> <p>13 A It came up after that. I think 14 in a way I wanted to try to do more, to be 15 more of a provider for my family, and I 16 really wanted to be, you know, more 17 financially successful. And after looking 18 -- I went to Redstone Arsenal with Mr. 19 Bradley and I saw what truly was involved 20 in the whole thing. And there was no way I 21 was going to be able to fill that role that 22 needed to be filled, and I told him he was 23 going to have to get someone else. And the</p>
<p>Page 233</p> <p>1 Q Last time we talked about your 2 meeting with Mr. Crowell on October 27th. 3 Do you remember that meeting you told me 4 about?</p> <p>5 A Yes.</p> <p>6 Q When y'all were talking about -- 7 when y'all were having that meeting, my 8 understanding is that the DP upgrade 9 administrator job was off the table. That 10 was not discussed between you and Mr. 11 Crowell at that time; is that correct?</p> <p>12 A I believe I mentioned that, and 13 I also believe that I -- I told him that 14 there was no possible way that I could go 15 and be gone to all these different Army 16 bases for a week or three days or two weeks 17 at a time in the situation that I was in.</p> <p>18 Q Had you not already rejected 19 that position, though, by the time you 20 spoke with Mr. Crowell in October 2003?</p> <p>21 A I had told Mr. Bradley, I had 22 told Gabe, I had told Brian that we were 23 going to have to find someone else to do</p>	<p>Page 235</p> <p>1 reason that I made that decision and 2 thought that was there was a gentleman 3 there at Redstone whose wife was at home 4 dying of cancer, and he was at work. And I 5 couldn't understand that. That's what made 6 me think of that. I said, "There's just no 7 way I can do this."</p> <p>8 Q Did that make you feel that you 9 should be home with your dad at that point?</p> <p>10 A Yes, it did. When I saw someone 11 that wasn't at home with their loved one, 12 that's what really made me think that. And 13 things just kept stacking up that made me 14 make my mind up about that. And then we 15 had that meeting. And it was like when I 16 came out of the meeting, I was totally 17 confused again about all those great ideas 18 that I had, I need to do this, I need to do 19 this, I need to do that. And then I left 20 that meeting and I was like, okay, now I 21 feel bad. Now what do I do?</p> <p>22 Q What you are referring to I 23 believe is when you left the meeting with</p>

1 **Mr. Crowell on October 27th. Am I right?**
 2 A Right.

3 Q When you say you left that
 4 meeting confused, am I right that at that
 5 point you did not specifically say I need
 6 my leave to start on such and such date,
 7 that you left it open?

8 A When I went in there, I went in
 9 there to tell him I needed to take the
 10 leave. And when I told him that and he
 11 spent 20 minutes or so -- I don't recall
 12 exactly how long the meeting was. But when
 13 he had told me the story about his father
 14 and that kind of thing, that kind of made
 15 me feel like maybe I can work my way
 16 through this and get through this and take
 17 care of everything I've got to take care
 18 of.

19 In other words, after I left the
 20 meeting, I had been completely talked out
 21 of exactly what I went in there to tell
 22 him. So, I went back to my cube and went
 23 back to work, and then the events that

1 with Mr. Crowell and you say you were --
 2 you felt talked out of what you had wanted
 3 to do, is that the basis for your claim
 4 that your attempt to get FMLA leave was
 5 interfered with?

6 A I don't think that it's the
 7 base. I think it's the -- no.

8 Q Is there something else that
 9 happened that told you, hey, someone is
 10 trying to prevent me from exercising my
 11 rights?

12 A I was waiting on a letter from
 13 my father's doctor to forward to Brian
 14 Burkhead. I got the letter, forwarded the
 15 letter the next day or the day after. I
 16 think it was the next day I got a letter in
 17 the mail telling me that I had been fired
 18 for failure to report to work for three
 19 consecutive days. That's the crux of this
 20 whole thing to me, honestly.

21 Q So, those are the events that
 22 you think are the most important in terms
 23 of your claims?

1 followed that week were the events that
 2 made me call Brian and tell Brian to turn
 3 that paperwork in.

4 Q What do you recall of what you
 5 were told about his dad's illness?

6 A I believe he told me that his
 7 father also had had cancer. And he told me
 8 that even though he was sick, he spent a
 9 lot of time with his dad and he was able to
 10 -- you know, he had family I believe he
 11 told me that helped him. Of course, he was
 12 married. He had brothers and sisters and
 13 other family that could help and that kind
 14 of thing. But, see, I wasn't -- I didn't
 15 have that.

16 Q Did he tell you what kind of
 17 treatment his dad was receiving?

18 A I don't recall.

19 Q Did he tell you whether his dad
 20 was able to drive and take care of himself
 21 during his cancer?

22 A I don't recall.

23 Q So, when you left that meeting

1 A Well, I think all the events are
 2 important. And the combination of all of
 3 them rolled up into one is why we sit here.

4 Q You don't dispute that you
 5 didn't call in those three days, though,
 6 right?

7 MR. BLYTHE: Object to the form.

8 Q Do you understand the question?
 9 MR. BLYTHE: You can answer.

10 Q I can ask you a different one if
 11 you are having trouble answering.

12 A Please.

13 Q There were days that you did not
 14 call in, correct?

15 A Yes.

16 Q Did you have any reason to think
 17 that you had been fired before you received
 18 that letter?

19 A Not really, no.

20 Q Was there any conversation you
 21 had with any Miltope employee before you
 22 got that letter that made you worry that
 23 you were going to be fired?

(Pages 240 to 243)

9

			Page 240	Page 242
1	A	I believe there was.		
2	Q	Tell me about that, please.		
3	A	Can we go off the record for a		
4		second and let me ask Derrick a question?		
5		(Discussion held off the record)		
6	Q	Back on the record.		
7	A	A Miltope employee called a		
8		friend of mine and asked, "Where is Pat?		
9		Nobody can find Pat. We've been trying to		
10		get in touch with Pat." And at that point		
11		they told them, "I don't know where he is.		
12		I'll check and see if I can find him." And		
13		he got off the phone with that person and		
14		called me and said that somebody had called		
15		looking for me. And I was like, "Well, why		
16		didn't they call me?"		
17		I was told by someone else that		
18		Brian and Gabe were directed not to answer		
19		any of my e-mails or return any calls that		
20		I might have made.		
21	Q	Is there anything else?		
22	A	No.		
23	Q	Who was the Miltope employee who		
		called your friend?	Page 241	Page 243
1	A	Darlene Hill.		
2	Q	And who was the friend she		
3		called?		
4	A	Rhonda Blythe.		
5	Q	The wife of your attorney?		
6	A	Yes.		
7	Q	Who told you that Gabe and Brian		
8		had been instructed not to respond to your		
9		e-mails?		
10	A	I believe it was Tina Howell.		
11	Q	Tina who?		
12	A	It was either Tina or Darlene.		
13		I don't remember which one.		
14	Q	Do you remember Tina's last		
15		name?		
16	A	Howell.		
17	Q	And she was a Miltope employee?		
18	A	Yes.		
19	Q	If I remember your testimony		
20		correctly before, you communicated via		
21		e-mail during this month of November. You		
22		did not make phone calls. Did I		
23				

1 and talked to her about it. I might have
 2 talked to her about it when they were at my
 3 house.

4 **Q** And when you talked to Tina as a
 5 friend, did she tell you they really want
 6 you to call and talk to them about this?
 7 Did she say anything at all about —

8 **A** I don't remember exactly. It's
 9 possible that they said that I should
 10 call. You know, I did send e-mails, and I
 11 wanted an answer that way. I didn't —

12 **Q** Did you think you had the right
 13 to dictate how they could communicate with
 14 you?

15 **A** I wasn't trying to dictate how
 16 they communicated with me. I was trying to
 17 protect myself at that point in time.
 18 Because at that point in time I had, like I
 19 said, received a letter telling me that I
 20 had been fired. And I did not want to say
 21 anything or do anything that -- I just
 22 really didn't know what was going on, and I
 23 wanted some answers. But I wanted them

1 to fax to Miltope?

2 **A** Yes.

3 **Q** And you personally did not
 4 provide that letter, correct?

5 **A** Rephrase it.

6 **Q** As I understood your testimony
 7 last time, you asked that letter to be
 8 faxed on your behalf.

9 **A** Right.

10 **Q** But you personally did not fax
 11 it or hand deliver it?

12 **A** I stood at the desk at the
 13 doctor's office and watched her walk with
 14 the letter to the fax machine, send it, and
 15 then brought it back to me.

16 **Q** And that's what you mean by
 17 providing the letter?

18 **A** Right, from the doctor's
 19 office. I don't own a fax machine.

20 **Q** What did you tell Tina when you
 21 talked to her as your friend during this
 22 time period?

23 **A** I told her I didn't have any

1 where I could look at them instead of
 2 trying to recall what I had talked to them
 3 about on the phone or what they had said to
 4 me on the phone.

5 **Q** Am I right that you came to this
 6 conclusion that you only wanted to talk to
 7 them in writing by e-mail after you
 8 received that letter from Ed Crowell?

9 **A** Probably.

10 **Q** You didn't have any reason to
 11 distrust them before that letter, did you?

12 **A** I had sent the letter prior to
 13 that. And I had told Brian after I asked
 14 him to turn that paperwork in, "If there is
 15 anything else, please let me know," which
 16 would mean if Mr. Crowell is looking for
 17 you to call him to discuss this matter
 18 about you losing your job, I will let you
 19 know. See, Brian could have let me know.
 20 Brian did not let me know.

21 **Q** When you said you provided the
 22 letter, are you referring to the doctor's
 23 letter that you asked the doctor's office

1 clue what was going on. I told her that
 2 Darlene had called looking for me. And
 3 then I believe she told me that Gabe and
 4 Brian were directed not to have any further
 5 communications with me. And the only
 6 response I got as an e-mail from Gabe
 7 regarding anything was that I needed to
 8 provide them with the CAV passwords, which
 9 I had already done. I had already given
 10 them to Lee Butler who was helping me ship
 11 stuff while I was running in and out of the
 12 doctor's office on the phone. There are
 13 people that can verify that.

14 I was working shipping things
 15 out, getting things done. Lee was
 16 helping. I had already done that. And the
 17 only answer I got back from him was I need
 18 the passwords and I need you to return the
 19 company laptop when you can. No mention of
 20 anything else that was going on. Just I
 21 need the passwords and I need this.

22 **Q** When Tina said that Gabe and
 23 Brian had been instructed not to respond to

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11

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1 your e-mails, did she say what the source 2 of her information was?	1 them to him in writing, did you?
3 A No.	2 A I probably gave them to him over
4 Q What was Tina's position at 5 Miltope?	3 the phone when I was talking to him over
6 A She was a trainer.	4 the phone.
7 Q What kind of trainer?	5 Q And it's possible that Brian and 6 Gabe did not know you had conveyed that 7 information to Lee, isn't it?
8 A She taught classes on	8 A It would be hard for them not to
9 certifications that we had to have.	9 know, because Lee was shipping an order out
10 Q She was not in supervision, was 11 she?	10 that needed work done in the computer that
12 A No.	11 Lee would have had to have done.
13 Q Did it occur to you that she 14 might just be passing on idle gossip 15 instead of reliable information?	12 Q How do you know that?
16 A No. I trusted what she said.	13 A Because those documents have to
17 Q Did it occur to you she might 18 have been mistaken?	14 have what's called -- or those items have
19 A Ditto. No. I can't answer the	15 to have what's called a DD-1348, which is a
20 -- can we take a break, please? But I need	16 form that the items would have to have on
21 to answer that question first.	17 them to be shipped according to procedure.
22 Q The question was did it occur to 23 you that she could have been mistaken?	18 Q Did Lee complete such a form for 19 you when you were out?
	20 A I walked him through doing
	21 those. I think I've got an e-mail from
	22 Melody Orr, who was my contact person at
	23 NAV ICP.
Page 249	Page 251
1 A No.	1 Q And her e-mail would establish 2 what?
2 MS. LINDSAY: We can take a	3 A That we were getting the 1348's
3 break. I need one, too.	4 printed out to ship those.
4 (Short break was taken.)	5 Q Was this while your dad was at 6 that appointment?
5 Q Back on the record. Earlier you 6 testified that you were wondering why they 7 had not tried to call you at home, the 8 Miltope folks. Do you remember that?	7 A Yes. I was in the doctor's
9 A Yes.	8 office with my father, and he was back I
10 Q How do you know they weren't 11 trying to call you at home?	9 think doing blood work while I was doing
12 A I would have seen the number on	10 this with Lee on the phone.
13 the phone or either answered the phone.	11 Q According to your calendar, that 12 occurred on November 6th, a Thursday. Do 13 you have any reason to think your calendar 14 is incorrect?
14 Q Were there times you saw their 15 number on the phone and you just didn't 16 want to pick up and talk to them?	15 A I would have to go back and
17 A I don't think so.	16 check, but I don't think so.
18 Q Isn't it possible there were 19 times you weren't home to pick up the phone 20 and they tried to call you?	17 Q According to your calendar note, 18 you said, "Took dad to doctor. Spoke to 19 Lee Butler on phone regarding Order Number 20 5071 three times. Called Mech" --
21 A It's possible.	21 A Mechanicsburg.
22 Q When you say you gave the 23 passwords to Lee Butler, you didn't give	22 Q Mechanicsburg, an abbreviation, 23 M-E-C-H, Mel Orr to get CAV link sent to my

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<p>1 house. She did.</p> <p>2 A Right.</p> <p>3 Q So, if the CAV link was sent to</p> <p>4 your house, would you have been able to</p> <p>5 work from home?</p> <p>6 A She told me that I would be able</p> <p>7 to work from home and get those forms</p> <p>8 printed out, but my computer was not quite</p> <p>9 up to par on doing that.</p> <p>10 Q So, when the forms did not get</p> <p>11 printed out from your home for order number</p> <p>12 5071, what did you do next?</p> <p>13 A Melody went in the system and</p> <p>14 completed them, which is something that has</p> <p>15 to be done. And I had given Lee the</p> <p>16 passwords, and Lee would have printed the</p> <p>17 forms out.</p> <p>18 Q Why would Lee need the passwords</p> <p>19 if Mel had already completed them?</p> <p>20 A Melody could not -- when I say</p> <p>21 completed, that is a status code in the</p> <p>22 system to show that that item is repaired</p> <p>23 and finished, completed. But those</p>	<p>1 Q According to your notes, it says</p> <p>2 on Saturday, "McQueen Street load-in."</p> <p>3 A That was when we met there and</p> <p>4 got the gear out. And we might have</p> <p>5 rehearsed for a little bit, but not much.</p> <p>6 The rehearsal was basically Sunday.</p> <p>7 Q And then according to your</p> <p>8 calendar, the rehearsal also occurred on</p> <p>9 Monday, November 10th?</p> <p>10 A Probably Monday morning. I</p> <p>11 think we had to leave by a little after</p> <p>12 lunch.</p> <p>13 Q Did you ever tutor someone named</p> <p>14 Josh?</p> <p>15 A Josh Brewer.</p> <p>16 Q On your November 11th entry it</p> <p>17 just says, "Josh PMT due 7/30." Was that a</p> <p>18 payment due to you?</p> <p>19 A For his lessons.</p> <p>20 Q So, you were tutoring Josh?</p> <p>21 A Yes.</p> <p>22 Q When you were picking up Sydney</p> <p>23 from visiting her mom that prior weekend,</p>
Page 253	Page 255
<p>1 documents that have to be shipped with them</p> <p>2 have to be printed out and attached to</p> <p>3 them. So, she could not have done that</p> <p>4 short of printing them out and faxing all</p> <p>5 of them to him to put on there. And then</p> <p>6 the bar codes would probably not have read</p> <p>7 correctly at that point.</p> <p>8 Q On your calendar entry for</p> <p>9 November 7th, you say, "Worked with Lee on</p> <p>10 phone. Talked to Brian Goff, 6487."</p> <p>11 A That might have been when we</p> <p>12 were trying to get those printed out.</p> <p>13 Q So, you were trying to get Order</p> <p>14 5071 shipped out on that Friday?</p> <p>15 A Exactly.</p> <p>16 Q When you couldn't get it done at</p> <p>17 home?</p> <p>18 A Right.</p> <p>19 Q And on that same day, you were</p> <p>20 also preparing to go to Atlanta for a</p> <p>21 McQueen Street rehearsal, correct?</p> <p>22 A I believe so. I think it was on</p> <p>23 Sunday we had that rehearsal.</p>	<p>1 do you remember how you told me you had a</p> <p>2 flat tire and you got in real late?</p> <p>3 A Right.</p> <p>4 Q You were picking her up on</p> <p>5 Sunday night, right?</p> <p>6 A Correct.</p> <p>7 Q That following Monday you said</p> <p>8 you were too tired to come to work, right?</p> <p>9 A Right.</p> <p>10 Q And that's when you called in to</p> <p>11 Darlene and told her you had a flat tire?</p> <p>12 A Right.</p> <p>13 Q So, I guess it's inaccurate on</p> <p>14 your calendar when you wrote on the 3rd,</p> <p>15 which was that Monday, "Worked. Syd went</p> <p>16 to school"?</p> <p>17 A It could be, yes. Let me look</p> <p>18 at that, please.</p> <p>19 Q Let me give you another copy.</p> <p>20 A Yeah, that's not correct.</p> <p>21 Q Okay.</p> <p>22 A Because that was the Monday that</p> <p>23 she was down there for Halloween. This is</p>

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1 November 3rd. I believe Halloween was over 2 that weekend or the end of that week. 3 Q And, in fact, the Miltope 4 records in terms of your time worked 5 reflect that you were absent on that 6 Monday, as well. 7 A Yes. You are correct in that. 8 Q So, is it possible there are 9 other inaccuracies on this Exhibit 9? 10 A I'm sure it's possible. I mean, 11 I don't -- I don't think there is. If you 12 would like for me to review that, I will. 13 Q Well, did you fill it out after 14 the fact, after these dates? 15 A No. It was around the same time 16 all this was going on. I just made a 17 mistake. 18 Q Did you look for any other 19 calendars that you had for July, August, 20 September, October? 21 A No. 22 Q Did you have any more? 23 A I might have had one like on the	1 A No. 2 Q In your discussions with Rhonda, 3 did she indicate that she had something 4 against Miltope? 5 A Not -- I mean, no. 6 Q Do you know why -- when she was 7 called by a Miltope employee looking for 8 you, do you know why she didn't just tell 9 them, "Yeah, I know where he is"? 10 A She probably said, "I don't know 11 exactly where he is. Have you tried his 12 house?" I mean, I was not a party to the 13 conversation. I don't know what exactly 14 she said. I do know that some time after 15 that conversation that they had, I was 16 called and I was at home. 17 Q And did you pick up the phone? 18 A Yeah. 19 Q Who did you talk to? 20 A Derrick. 21 Q Oh. You are not talking about a 22 Miltope employee calling you, then. 23 A No. I don't recall anyone
Page 257	Page 259
1 refrigerator at home or something, but I 2 don't have it. I've got one that was in my 3 office, but I think it's mostly -- this was 4 '04, so it's not pertinent. 5 Q Before your father had pneumonia 6 in July, you were good friends with Rhonda 7 Blythe, right? 8 A Yes. 9 Q Did you have any information 10 about any complaints she may have had 11 against Miltope at that time? 12 A Not really. 13 Q What do you know, if anything, 14 about complaints she may have had against 15 Miltope? 16 A All I know about that is she was 17 working there and she had complications 18 with her pregnancy, and then after that she 19 was not working there. But I don't know 20 any details. 21 Q Did you ever hear that she was 22 claiming she was being paid differently 23 from men?	1 calling me. I think Tina might have called 2 me or e-mailed me or something of that 3 nature. 4 Q Do you remember asking Ed 5 Crowell if you could buy some audio 6 equipment that Miltope was going to discard? 7 A I remember Miltope having some 8 television production equipment, which did 9 include some audio equipment, that was from 10 a lessor of part of the building. 11 Q When was that? 12 A I do not have a clue. I don't 13 remember. 14 Q Do you remember asking if you 15 could have a microphone from that set of 16 equipment? 17 A I remember asking -- no, it was 18 not a microphone. I might have asked about 19 a microphone. But he told me that there 20 was a small mixing board, and I asked him 21 about that. And I found someone that 22 purchased the lot of that, and it was my 23 understanding that he had let me have that

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<p>1 little mixing board for helping them 2 liquidate that equipment.</p> <p>3 Q Do you remember being quoted 4 that if you would give -- if you would pay 5 \$200, you could have that equipment, that 6 mixing board?</p> <p>7 A I remember him saying something 8 about that. But after I -- he told me I 9 could purchase it outright for that. But 10 then after I found someone that bought the 11 lot of it, no mention was made of money at 12 all after that.</p> <p>13 Q When you were employed at 14 Miltope the first time, you received a 15 handbook like this here (indicating), 16 correct?</p> <p>17 A Yes.</p> <p>18 Q And do you still retain a copy 19 of that handbook?</p> <p>20 A I don't know. I don't think so.</p> <p>21 Q Were you ever asked to give it 22 back?</p> <p>23 A I don't recall that.</p>	<p>1 Q So, am I understanding how you 2 were making decisions at that time period, 3 or is there something else you need to tell 4 me so I can understand your decision-making 5 process?</p> <p>6 A Could you clarify that, please?</p> <p>7 Q Sure. If I understand you 8 right, after the conversation with Mr. 9 Crowell on October 27th until the week of 10 November 3rd when things became very hectic 11 for you, in that interim period you were 12 considering managing your job as well as 13 the care of your dad? In other words, you 14 were --</p> <p>15 A Was I entertaining the idea of 16 trying to do that? Yes. I was trying to 17 figure out how I would be able to do both.</p> <p>18 Q So, you were debating whether to 19 take leave at all in that week period?</p> <p>20 A Well, I had already filled out 21 the paperwork. It was more or less I was 22 debating on whether or not to turn it in.</p> <p>23 And then when all those events took place,</p>
Page 261	Page 263
<p>1 Q Between the time that you left 2 Mr. Crowell's office on October 27th and 3 the time you picked up your daughter that 4 following weekend, did you have any 5 conversations with Gabe or Brian about 6 possibly taking leave?</p> <p>7 A I might have talked to both of 8 them about it, but I don't remember an 9 exact conversation.</p> <p>10 Q If I understood your testimony 11 correctly, you left Mr. Crowell's office 12 wondering if you could possibly manage to 13 continue your job and care for your dad 14 based on what Mr. Crowell's story was about 15 his own father's illness; is that right?</p> <p>16 A Maybe. But I -- go ahead.</p> <p>17 Q And if I understood you 18 correctly, you reconsidered that position 19 when this week of November 3rd became so 20 difficult to manage with the illness of 21 your daughter and your father's needing 22 care?</p> <p>23 A Yes.</p>	<p>1 there was no other option. I thought about 2 it. And when everything started happening, 3 there was just no way.</p> <p>4 Q So, as things became difficult 5 the week of November 3rd, that prompted you 6 to call or to discuss with Brian your 7 request that he turn in the paperwork for 8 you?</p> <p>9 A Exactly.</p> <p>10 Q Was there anything else that 11 prompted you to ask Brian to turn in the 12 paperwork for you?</p> <p>13 A I just think the situation as a 14 whole was what prompted me to turn the 15 paperwork in.</p> <p>16 Q That situation being the events 17 of the week of November 3rd?</p> <p>18 A The events of that, yeah, the 19 events as a whole.</p> <p>20 Q When you asked Brian to turn the 21 paperwork in for you, did you tell him that 22 there was a date certain that you wanted 23 your leave to begin?</p>

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<p>1 A The paperwork had a place on it 2 for the requested date of the leave to 3 begin, and the blank had "immediately" 4 filled in. So, as of that moment.</p> <p>5 Q After you received the letter 6 from Ed Crowell telling you that you had 7 violated the no call-no show policy and 8 were considered terminated, did you 9 understand that you could be reinstated to 10 your job if you requested reconsideration 11 and tried to correct any policy violations?</p> <p>12 A I could not believe that I had 13 gotten that letter. And I did not take 14 that letter as you need to call and 15 straighten all this out. I took that 16 letter as I had been terminated. It had 17 date of termination on there. So, in other 18 words, I had been fired.</p> <p>19 Now, after all the events that 20 had taken place getting that letter, the 21 part on there that stuck out the most was 22 you've been terminated or your employment 23 has been terminated as of this date.</p>	<p>1 what I did. I took it back up there and 2 had her fax it. Because I kept telling 3 her, "I need to get this letter from the 4 doctor." I told her I needed to get that 5 letter from the doctor, and she called up 6 there and checked into why the letter 7 wasn't ready yet and that kind of thing. 8 And I think the next time she came down was 9 when she came and brought the letter.</p> <p>10 Q So, the letter you were 11 referring to is what we have designated as 12 Exhibit 11, right?</p> <p>13 A Yes. 14 (Defendant's Exhibit 12 15 was marked for. 16 identification)</p> <p>16 Q Let me show you what I've marked 17 as Exhibit 12.</p> <p>18 A That's that letter, other 19 letter.</p> <p>20 Q Be aware if you are going to 21 rely on notes while we are talking, I get 22 to look at them. So, you might want to 23 close your notebook</p>
Page 265	Page 267
<p>1 Q But there's nothing in that 2 letter that says you are not eligible for 3 rehire, is there?</p> <p>4 A I didn't understand at that 5 point why I would have to be rehired if I 6 had filled out paperwork for a leave.</p> <p>7 Q My question is --</p> <p>8 A No. 9 (Defendant's Exhibit 11 10 was marked for. 11 identification)</p> <p>11 Q I'm going to show you what I've 12 marked as Exhibit 11. If I understand 13 correctly your testimony, this is the 14 document that the hospice employee was 15 directed to fax to Miltope; is that correct?</p> <p>16 A No. Let me clarify that. The 17 hospice employee picked this letter up for 18 me from Dr. Law's office and brought it to 19 my house. At that point I took the letter 20 back to the doctor's office and had her fax 21 it, because I do not have a fax machine. 22 And I was asked to provide a letter from 23 the doctor's office, and that's exactly</p>	<p>1 A I'm making notes as we go. I'm 2 writing as we go. I mean, this is just 3 stuff I'm writing down as we go here.</p> <p>4 Q Did you ask the doctor to do 5 this letter dated November 29th, Exhibit 6 12?</p> <p>7 A Yes, I did.</p> <p>8 Q And did you obtain a copy of 9 this letter from Temple Medical Clinic?</p> <p>10 A Yes, I did.</p> <p>11 Q What was the purpose for getting 12 this letter dated November 29th?</p> <p>13 A After I received the letter from 14 Miltope telling me that I had terminated or 15 been terminated or terminated my position 16 for failure to report for three consecutive 17 days, I had no idea in the world what that 18 would be the cause of. I sent e-mails 19 asking why. I had no idea why. I thought, 20 you know, maybe I need to call the doctor 21 and get a better explanation of this. No 22 one ever told me I needed another letter. 23 Nobody ever contacted me about a letter.</p>

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<p>1 But I had another letter done detailing 2 everything that was going on with my dad. 3 Q Did anyone give you the idea 4 that you should get this detailed letter? 5 A I came up with that all by 6 myself. 7 Q Why didn't you mail this letter 8 or have this letter faxed to Miltope? 9 A Well, it says on the previous 10 letter please feel free to contact me for 11 any questions from the doctor's office. 12 After some after-thought about having this 13 other letter done, I thought if there's a 14 reason that Miltope needed to contact the 15 doctor's office, they could clarify this 16 and it would be a mute point. Because they 17 had a way to contact the doctor and the 18 medical clinic for clarification or either 19 for anything else they might need to figure 20 out or to go with that leave paperwork that 21 I had turned in. 22 Q So, rather than provide this 23 November 29th letter to — strike that.</p>	<p>1 getting this letter was to assist you in 2 pursuing your claims against Miltope? 3 A After a lot of thought about the 4 whole thing, the only thing I could come up 5 with was maybe this letter did not satisfy 6 what Miltope needed. So, I just wanted him 7 to detail in a letter the situation, how it 8 was, how it was then, everything else, and 9 then there would be no question of it. But 10 as I said before, they had a way to contact 11 the doctor's office if the letter had been 12 the problem. That was never done. So, I 13 had to think after that fact that that 14 could not have been what it was. 15 Q So, rather than provide this 16 letter to Miltope, your expectation was 17 that Miltope would contact the doctor 18 directly based on the prior letter of 19 November 5th, correct? 20 A Right. 21 Q So, you did not make a phone 22 call or send an e-mail to Gabe or Brian to 23 say, hey, by the way, I do have a better</p>
Page 269	Page 271
<p>1 This letter is dated November 29th 2004. 2 Is that the correct date? 3 A Right. 4 Q So, this was done over a year 5 after you left Miltope? 6 A Right. Well, I don't know. It 7 says right there since July 2003, if you 8 will read in the letter. It could be a 9 typographical error. I'm not sure. We 10 would have to contact Temple Medical Clinic 11 to find out. 12 Q Let's look at the letter, 13 because I think we can establish it was 14 2004. He states towards the middle of the 15 letter, "A repeat CT of the chest done in 16 November of 2004 revealed no sign of 17 malignant tumor." 18 A Then the date is correct. 19 Q Was your idea that you could use 20 this letter with another potential employer 21 other than Miltope? 22 A No, no, no. 23 Q So, your primary purpose in</p>	<p>1 letter that may answer any questions y'all 2 may have had? You never did that, right? 3 A I don't think so. Not after 4 that period of time, no. 5 Q Look back at what was Exhibit 7, 6 if you would. Go to the page that at the 7 very bottom right-hand corner has the 8 number 121 at the bottom. It's labeled 9 Decision on Unemployment Compensation 10 Claim. Do you see that? 11 A Right. 12 Q You appeared for a hearing on 13 your unemployment claim against Miltope, 14 correct? 15 A Right. 16 Q And you were represented by 17 counsel, correct? 18 A Right. 19 Q And when you appeared at that 20 hearing, you were attempting to establish 21 that you were entitled to benefits, right? 22 A Yes. I thought so. 23 Q There are some findings. Do you</p>

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1 see the paragraphs under the word 2 "Findings"? If you will go to the second 3 paragraph, it says, "The claimant worked." 4 Do you see that line?	1 A After I turned the paperwork in 2 for the leave, I told them that they could 3 reach me at home or on my cell phone. And 4 I did not -- I did not know that I had to 5 call in those days. If they needed me, 6 they could have gotten me.
5 A Right.	7 Q Are you saying that you told 8 Brian, "You can call me at home or on my 9 cell"?
6 Q That first sentence says, "The 7 claimant worked for the listed employer 8 from February 12, 2001, until November 11, 9 2003, as a government property 10 administrator." Is that a correct fact?	10 A Right.
11 A Well, it's not a complete fact. 12 But what is listed is correct.	11 Q Did you tell anybody else, "You 12 can call me at home or on my cell"?
13 Q And when you say it's not 14 complete, you are saying it doesn't 15 reference the prior term of employment with 16 Miltope?	13 A Brian was my supervisor. If 14 anyone else needed to know, they could have 15 asked Brian.
17 A No. It doesn't -- that was not 18 my sole title.	16 Q So, this communication you just 17 referenced was what happened on November 18 5th, Wednesday?
19 Q There's something else that you 20 did for Miltope that you've told us about?	19 A When he told me he needed a 20 letter.
21 A Right.	21 Q This was the day that you asked 22 him to turn in your leave paperwork, right?
22 Q The CAV administrator position; 23 is that right?	23 A Exactly.
Page 273	Page 275
1 A Right.	1 Q So, from that day forward, you 2 didn't think you were obligated to call in?
2 Q So, that was omitted. But 3 otherwise that statement --	3 A No.
4 A That would be a correct 5 statement.	4 Q I'm correct?
6 Q The next statement is, "The 7 claimant was considered to have abandoned 8 his job after being absent for more than 9 three consecutive working days without 10 proper notice to or permission from the 11 employer." Do you see that statement 12 there?	5 A Yes. And I told him I would 6 keep him abreast of the situation. As I, 7 you know, had things, I sent him an e-mail 8 telling him about the tests and stuff my 9 father had on the 7th -- on the 6th and 10 that kind of thing. I told him I was going 11 to help Lee get that order out of there.
13 A Yes, I do.	12 Q And did you also say that you 13 were going to try to come in the next day 14 to catch up on some work?
14 Q It is accurate, isn't it, that 15 there were three consecutive working days 16 when there was not notice provided that you 17 were going to be absent, correct?	15 A I don't recall if I told him 16 that. I might have.
18 A I think in -- I don't agree with 19 that.	17 Q If it's in an e-mail that you 18 wrote, you wouldn't have any reason to 19 dispute that, would you?
20 Q There were three consecutive 21 working days where you didn't actually call 22 in to say, "Hey, I'm not going to be there 23 today," correct?	20 A No.
	21 Q And as things became more 22 complicated at home, you tried to work from 23 home using your telephone and your

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1 computer? 2 A I tried. 3 Q Before you had that conversation 4 with Brian about the doctor's letter, you 5 already knew that a doctor's substantiation 6 would be required, didn't you? 7 A He asked for the letter from the 8 doctor, and that's what I tried to provide. 9 Q And prior to that time when you 10 had talked with Brian, Gabe and Ed Crowell 11 and Dee Coulter, you were aware that a 12 doctor's letter was going to be required, 13 right? 14 A I honestly don't remember 15 anything about a doctor's letter or 16 anything. I remember filling out the 17 paperwork. I remember having it in the 18 folder on my desk. I told him if there's 19 anything else he needed, let me know. And 20 that's when he told me he needed a letter. 21 That's all it said, a letter. So, I called 22 the doctor's office and requested a letter. 23 Q You were aware, weren't you,	1 you were aware of the policies that are in 2 this Exhibit 4? Do you remember that, 3 Mr. Bailey? 4 A In our last meeting? 5 Q Yes. 6 A I think it -- I remember saying 7 that I remembered that. I did not have or 8 rely on a handbook as I was making these 9 decisions because I was talking to people 10 in positions that would be able to guide me 11 correctly on how to do this. I didn't sit 12 down and figure out how I was going to do 13 this. What I did was I -- Dee had told me 14 that I would qualify. So, that pretty much 15 told me that I would qualify. So, I didn't 16 -- I didn't spend a lot of time researching 17 it in the book. 18 Q When we last spoke, you did not 19 recall Dee saying that you would qualify. 20 A When she came -- well, she 21 brought me the paperwork. 22 Q But you had not completed it 23 yet, so how could she know whether you
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1 that if something didn't qualify for family 2 medical leave, you could still get a 3 medical leave of absence with a doctor's 4 note, even if it wasn't a serious health 5 condition, right? 6 A No. 7 Q Do you remember the policy in 8 the handbook that said that an employee 9 requesting a medical leave of absence is 10 required to submit a statement from his 11 physician indicating the need for such a 12 leave? 13 A I don't remember it from the 14 handbook, no. 15 Q Would you look at what is -- 16 keep that one handy, because we are going 17 to go back to it. Take a look at Exhibit 18 4. If you will, look on page -- it says 19 129 according to our stamp. It's actually 20 Page 10 of the handbook. Do you see that 21 in that exhibit about three pages back? 22 A All right. 23 Q Do you remember testifying that	1 would qualify? 2 A Because I told her when she came 3 into my cube about the situation that was 4 going on, and she told me that I would 5 qualify. 6 Q So, did you just remember that 7 since we last met? 8 A I don't know if I -- I might 9 have gotten something confused before. But 10 she brought me the paperwork to fill out. 11 Q Then I'm sure you recall, if she 12 did say that, that she also told you that 13 you would have to submit the doctor's 14 certification to substantiate that? 15 A I don't remember anything period 16 about a doctor's certification. I had 17 someone get me up a copy of the actual form 18 for family medical leave. Since Brian had 19 turned mine in, I did not have a copy of 20 that to look at. And there is a part of 21 that that is several pages into it where it 22 has a section for the doctor to complete. 23 I don't recall ever having seen that

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<p>1 before. I don't know if it's two separate 2 parts, and then this detaches and goes to 3 the -- I don't know how that works. But 4 the part that I got to fill out did not 5 have the doctor's certification in it.</p> <p>6 Q Well, you couldn't fill out the 7 doctor's certification yourself, could you?</p> <p>8 A I realize that. But I could 9 take that to a doctor and have it filled 10 out.</p> <p>11 Q Let's back up. You don't know 12 whether Brian ever turned in that 13 paperwork, correct?</p> <p>14 A I would have to think that he 15 did, because when I e-mailed him -- or when 16 I told him to turn it in and let me know if 17 there was anything else he needed, he 18 responded back to me that he needed a 19 letter. So, I would assume that he turned 20 that in.</p> <p>21 Q That's just an assumption on 22 your part, correct?</p> <p>23 A No, I don't think so, because he</p>	<p>1 your cube and, therefore, never turned it 2 in, you wouldn't say that he's lying, would 3 you?</p> <p>4 MR. BLYTHE: I'm going to object 5 to the form of that question.</p> <p>6 THE WITNESS: Please do.</p> <p>7 MR. BLYTHE: Reword that a 8 little bit.</p> <p>9 Q If I represent to you that Brian 10 never saw the paperwork and never turned it 11 in, do you think that I've been lied to?</p> <p>12 A Yes.</p> <p>13 Q And you think Brian would lie?</p> <p>14 MR. BLYTHE: Object to the form 15 of the question. Here again, it assumes 16 facts not in evidence. We are assuming 17 stuff that Brian may or may not say or do.</p> <p>18 MS. LINDSAY: That's my whole 19 concern. I think the initial phase that 20 we've come to here is all about an 21 assumption, and I'm trying to clarify 22 that.</p> <p>23 A Brian was my supervisor. I</p>
<p>1 would have had to have someone tell him 2 that the letter was necessary.</p> <p>3 Q If we need to go back over the 4 testimony you gave last time, we can. I 5 don't want to have to go through that 6 time-consuming process. The last time we 7 met, you admitted that you didn't know one 8 way or the other whether Brian ever turned 9 that paperwork in. So, are you changing 10 your testimony?</p> <p>11 A No. I'm adding to my testimony.</p> <p>12 Q And you are adding to the 13 testimony by saying you think it's a fair 14 assumption on your part that he actually 15 turned it in?</p> <p>16 A I asked him to turn it in. He 17 came back and asked me for a letter to go 18 with it. So, I am assuming -- and I'm 19 pretty sure that he had to have taken it to 20 either Dee or someone else for them to tell 21 him, "Oh, he needs this letter."</p> <p>22 Q And if Brian testifies under 23 oath that he never saw that paperwork in</p>	<p>1 asked Brian to turn in the paperwork. 2 Brian tells me I need a letter from my 3 father's doctor to go with that paperwork. 4 So, he had to have turned that in to know 5 that a letter was needed.</p> <p>6 Q He never told you he turned it 7 in, did he?</p> <p>8 A I e-mailed back telling him that 9 I had requested the letter from the 10 doctor. I think I even thanked him for 11 turning it in.</p> <p>12 Q The question is he never told 13 you he turned it in, correct?</p> <p>14 A He never told me he didn't.</p> <p>15 Q He never told you he turned it 16 in, did he?</p> <p>17 A I would have to look back 18 through my e-mails to see if there was 19 anything in there about it.</p> <p>20 Q I have that exhibit, too. If we 21 need to go through it, we can. So, you 22 don't know one way or the other how to 23 answer that question? All right. Well,</p>

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<p>1 let's go back to the policy, then.</p> <p>2 A Can you just rephrase the</p> <p>3 question so we can get to an answer on</p> <p>4 that?</p> <p>5 Q I asked you he never told you</p> <p>6 that he turned it in, did he? And you</p> <p>7 haven't answered it yet. Do you have an</p> <p>8 answer?</p> <p>9 A Wow. I had no reason to think</p> <p>10 anything other than he turned it in. No,</p> <p>11 he did not tell me he turned it in. But</p> <p>12 nothing in the verbiage of any of his</p> <p>13 statements back to me or requesting the</p> <p>14 letter indicated that he had not turned it</p> <p>15 in. Is that fair?</p> <p>16 Q I think I understand you.</p> <p>17 A I'm sorry. I can't be more</p> <p>18 clear on that.</p> <p>19 Q If you look back at the policy</p> <p>20 excerpt that we have labeled Exhibit 4, do</p> <p>21 you see there that an employee requesting a</p> <p>22 medical leave of absence is required to</p> <p>23 submit a statement from his physician,</p>	<p>1 that FMLA leave included the requirement</p> <p>2 that there should be a physician statement,</p> <p>3 do you think that she would have conveyed</p> <p>4 that to you?</p> <p>5 A Probably through Brian.</p> <p>6 Q You don't think she would have</p> <p>7 told you that herself when she gave you the</p> <p>8 paperwork?</p> <p>9 MR. BLYTHE: I think that</p> <p>10 question has been asked and answered two or</p> <p>11 three times.</p> <p>12 A I don't know.</p> <p>13 Q Well, last time you didn't</p> <p>14 remember that conversation with her the</p> <p>15 same way you remember it today, so I'm just</p> <p>16 trying to make sure. Do you remember</p> <p>17 anything else she may have said to you?</p> <p>18 A Nothing stood out other than she</p> <p>19 told -- I remember her telling me that I</p> <p>20 would qualify because I was an only child.</p> <p>21 I remember her saying something about</p> <p>22 that. I don't recall anything about a</p> <p>23 physician's statement, a physician's</p>
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<p>1 correct?</p> <p>2 A Hold on.</p> <p>3 Q Do you see that at the bottom of</p> <p>4 Page 10?</p> <p>5 A Yes, I see that.</p> <p>6 Q Do you understand that this is</p> <p>7 something that's entirely independent of</p> <p>8 FMLA, or do you not know one way or the</p> <p>9 other?</p> <p>10 A I don't know.</p> <p>11 Q Do you expect Brian to have</p> <p>12 followed the policies in this Miltope</p> <p>13 handbook?</p> <p>14 A I have no -- I have no -- I</p> <p>15 would --</p> <p>16 Q Do you think he would follow the</p> <p>17 policy in the handbook?</p> <p>18 A Yes.</p> <p>19 Q Do you think Dee Coulter was</p> <p>20 trained to follow the policy in the</p> <p>21 handbook, as well?</p> <p>22 A I'm sure she was.</p> <p>23 Q And if her training included</p>	<p>1 letter, anything like that. I don't recall</p> <p>2 that.</p> <p>3 Q And this is the conversation</p> <p>4 where Brian Goff was with you?</p> <p>5 A I believe so. I think he was</p> <p>6 working on my computer or something. If</p> <p>7 Brian had told me, "We need the physician's</p> <p>8 statement part of the FMLA paperwork filled</p> <p>9 out by your father's doctor," then I would</p> <p>10 have probably said, "What is that?" and</p> <p>11 then we would have proceeded on from</p> <p>12 there. But I was told I needed a letter,</p> <p>13 and that's all I was told. So, that's what</p> <p>14 I did the very same day. In fact, five</p> <p>15 minutes after I got off with him, I called</p> <p>16 the doctor's office and requested a letter</p> <p>17 to go with my FMLA paperwork.</p> <p>18 Q So, are you saying today that</p> <p>19 Dee Coulter, without having your completed</p> <p>20 paperwork in hand, without having the</p> <p>21 opportunity to discuss with Ed Crowell the</p> <p>22 circumstances of your situation, that she</p> <p>23 actually told you, "Yes, you will qualify"?</p>

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1 A I don't know if she worded it
 2 you will qualify, you will probably
 3 qualify, I think you qualify. I don't
 4 know. But I got the impression that I
 5 would qualify for FMLA after having the
 6 conversation.

7 Q Do you admit that when you had
 8 conversations with Brian and Gabe, they
 9 both told you that you needed to get in
 10 touch with human resources about any
 11 requirements in particular to qualify for
 12 this FMLA leave?

13 A Well, I mean, that's why I got
 14 the paperwork from her.

15 Q And --

16 A I -- go ahead. I'm sorry.

17 Q If you will, look back on Page 9
 18 of the policy.

19 A That would be 128?

20 Q That's right. Under Sick Time
 21 it says, "The company reserves the right to
 22 require medical substantiation following
 23 three days of consecutive absence." Hadn't

1 piece of paperwork. But I told them that
 2 her birthday is going to be the 21st of
 3 February. I want to be off on that Friday
 4 and the following week. That way I would
 5 have the whole weekend. She was born on
 6 Friday, and I would have the week. I never
 7 filled out any paperwork on that at all.

8 Q How much advance notice did you
 9 give to your supervisor about that?

10 A Probably a week or so at least.

11 Q When was the c-section
 12 scheduled? When was it decided that it
 13 would be on February 21st?

14 A I'm doing good to remember all
 15 the others. I can't remember the day we
 16 decided.

17 Q Was it a couple of weeks in
 18 advance at least?

19 A I'm not sure. I don't know. It
 20 was -- probably that would be fair. I
 21 don't recall exactly the amount of time
 22 that passed between the day we decided and
 23 the actual day.

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1 you been required before to submit medical
 2 substation when your dad --

3 A Never.

4 Q You are saying you never had to
 5 do that before?

6 A Never. I also never had to fill
 7 out the first piece of paperwork when I was
 8 off work for a week after my child was
 9 born.

10 Q You were actually at the
 11 hospital at that time, weren't you?

12 A I was at the hospital with my
 13 child when she was born, yes.

14 Q And there wasn't time for you to
 15 fill out paperwork when your wife was in
 16 labor, was there?

17 A It was a planned C-section. So,
 18 I knew exactly when she was going to be
 19 born.

20 Q So, you didn't tell your
 21 supervisor, hey, the c-section is on this
 22 date and fill out any paperwork?

23 A I didn't fill out the first

1 Q Going back to Exhibit 7, the
 2 unemployment compensation claim decision,
 3 do you agree that the last time you worked
 4 was November 3rd?

5 A Define work. The last time I
 6 was at work or the last time I was doing
 7 something for Miltope?

8 Q I guess the real question is,
 9 just to clarify, you didn't actually report
 10 to work on November 3rd, correct?

11 A I called in.

12 Q And you attempted to do work by
 13 telephone when you were not reporting to
 14 work that week of November 3rd, correct?

15 A Right.

16 Q So, with those clarifications --
 17 well, strike that.

18 You agree that you were out on
 19 November 4th 2003 when your daughter was
 20 sick, correct?

21 A Correct.

22 Q You agree that you notified the
 23 employer at that time, correct?

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1	A Yes.	1 Miltope, correct?
2	Q You agree with the statement	2 A Right.
3	that on November 5th you were out again due	3 Q And is that the reason for your
4	to your father's illness?	4 disagreement with that statement?
5	A Right. And that's the day I	5 A Yes.
6	asked Brian to turn the paperwork in,	6 Q There is a statement here that
7	November 5th.	7 the claimant was considered to have
8	Q According to this statement,	8 abandoned his job because he had been
9	"The claimant had requested a Family	9 absent from November 6, 2003, through
10	Medical Leave of Absence related to his	10 November 11, 2003, without notice to or
11	father's illness in October 2003." That's	11 permission from the employer. Do you
12	correct, right?	12 disagree with that statement?
13	A Yes, because I filled the	13 A Please do that again.
14	paperwork out in that week prior to -- the	14 Q It states here, "The claimant
15	week before. I filled the paperwork out	15 was considered to have abandoned his job
16	the week before.	16 because he had been absent from November 6
17	Q According to your testimony,	17 2003, through November 11, 2003, without
18	before you filled that out on October	18 notice to or permission from the employer."
19	27th. Is that still your testimony today?	19 Do you agree or disagree with that
20	A I'm not sure. It was the week	20 statement?
21	of the 27th.	21 A I disagree with that because I
22	Q According to your testimony	22 had turned that paperwork in and asked if
23	before, you filled out that paperwork the	23 there was anything else they needed, please
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1	same day you had the meeting with Ed	1 let me know.
2	Crowell on October 27th. Does that refresh	2 Q So, your disagreement is based
3	your memory?	3 on the fact that you told Brian on the 5th,
4	A It was that week. I'm not	4 "Turn in that paperwork for me" and you
5	exactly sure if it was that day, but it was	5 didn't hear anything else from Miltope --
6	that week I can say.	6 A Right.
7	Q When you went in to tell Ed	7 Q -- about what else might be
8	Crowell that you wanted to take leave,	8 needed?
9	hadn't you already completed the paperwork?	9 A You know, nobody came back and
10	A I believe so.	10 said that the letter wasn't sufficient.
11	Q It says here you left the	11 Nobody came back and said anything.
12	paperwork on your desk and asked your	12 Q So, the answer to my question is
13	supervisor to turn in the paperwork.	13 yes?
14	That's correct, right?	14 A Yes.
15	A True. That's correct.	15 MR. BLYTHE: Wait a minute.
16	Q It says, "The claimant did not	16 What was that question?
17	provide the required medical documentation	17 MS. LINDSAY: I asked him if he
18	with the paperwork to justify the request	18 disagreed with the statement because, one,
19	for a Family Medical Leave of Absence."	19 he had asked Brian to turn in the paperwork
20	Now do you disagree with that statement?	20 and, two, he says he didn't hear back
21	A In hindsight, yes.	21 anything.
22	Q At the time you thought you had	22 A So, that's yes. I'll go with
23	provided the November 5th letter to	23 that.

(Pages 296 to 299)

23

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<p>1 Q Sometimes if I ask a yes-or-no 2 question and it really is yes or no, go 3 ahead and answer it that way. We'll get 4 done faster.</p> <p>5 A All right.</p> <p>6 Q If you need to tell me more to 7 make me understand, that's fine.</p> <p>8 A Okay.</p> <p>9 Q When it says without notice to 10 or permission from the employer, you 11 disagree with that because you assumed that 12 you did have the leave approved, correct?</p> <p>13 A Yes.</p> <p>14 Q And did you raise these 15 objections at the hearing, your 16 disagreements with these statements?</p> <p>17 A Yes, I did.</p> <p>18 Q The next statement says, "The 19 claimant was never advised his request for 20 a Family Medical Leave of Absence had been 21 approved because the medical documentation 22 to justify the Family Medical Leave of 23 Absence was not submitted until after the</p>	<p>1 (Defendant's Exhibit 13 was marked for identification)</p> <p>3 Q Looking at Exhibit 13, it 4 appears that y'all were e-mailing back and 5 forth about your return of the laptop to 6 Miltope; is that correct?</p> <p>7 A Correct.</p> <p>8 Q And do you see there on November 9 19th he said, "We need you to return the 10 company laptop and provide passwords to CAV 11 system ASAP"?</p> <p>12 A Right.</p> <p>13 Q So, at that point it was your 14 position you had already conveyed those 15 passwords to Lee?</p> <p>16 A Right.</p> <p>17 Q How long did it take you to 18 return that laptop?</p> <p>19 A It was a while. I just -- you know, I had all my personal items in my cubical at work, and I had the laptop. It was a while. There's a record of that somewhere. I think I Fed-Exed it back to</p>
<p>1 claimant was separated." Did you disagree 2 with that statement?</p> <p>3 A Let me read this myself one more 4 time.</p> <p>5 Q Go ahead. It's the last 6 sentence of that Findings section.</p> <p>7 A No, I was never advised. I 8 agree with that statement. I was never 9 advised that my paperwork was not adequate.</p> <p>10 Q Well, this says -- it's a little 11 different statement -- that you were never 12 advised it was actually approved.</p> <p>13 A I was not notified if it had 14 been approved or disapproved.</p> <p>15 Q Thank you. That answers my 16 question. And did you appeal that 17 decision?</p> <p>18 A Yes, because I did not agree 19 with it.</p> <p>20 Q Was your unemployment 21 compensation claim ultimately denied?</p> <p>22 A Yes.</p>	<p>1 them or Derrick's office Fed-Exed it back to them.</p> <p>3 Q And that was after many requests 4 that you return the laptop, correct?</p> <p>5 A To give you a little groundwork on this e-mail right quick, what started this e-mail was the gentleman that kept his boat at my house told me that Gabe had instructed him to let me know I needed to return that laptop. And that upset me quite a bit because I could have somebody sent down there as a messenger to tell me something, but I could not get anything from anybody else.</p> <p>15 Q Don't you recall getting that in 16 a letter? Don't you recall that was in 17 your letter from Ed Crowell to return the 18 company laptop?</p> <p>19 A I don't -- it probably was. I don't deny that. You don't have to get it. I don't deny that.</p> <p>22 Q So, you knew as of the time you 23 were terminated that you were supposed to</p>
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<p>1 call him to arrange return of the laptop, 2 right, according to Exhibit 10?</p> <p>3 A Yeah. That's fine. But I 4 responded to Gabe with the first thing at 5 the bottom of the page, please direct all 6 communication directly to me. I've sent a 7 number of e-mails to Brian, no response, 8 with cc's to you and Mr. Crowell. You have 9 a way to contact me, please do so.</p> <p>10 Q So, when you wrote that, you 11 were responding to someone being sent as a 12 messenger to tell you something?</p> <p>13 A Exactly.</p> <p>14 Q Was that John Reeves?</p> <p>15 A Yes, it was.</p> <p>16 Q And he told you to return the 17 laptop, and that upset you that he was 18 being sent to do that?</p> <p>19 A Yes. I thought they could have 20 -- no one was answering my e-mails that I 21 had sent, but then he could send somebody 22 down there as a messenger to tell me 23 something.</p>	<p>1 Q You hadn't received a letter, 2 but you thought your leave was approved. 3 You also knew that if they needed you, they 4 could call you, right?</p> <p>5 A Right.</p> <p>6 Q So, when they e-mailed you, "You 7 need to call me or Brian ASAP," did it 8 occur to you that maybe they had been 9 having trouble reaching you and they needed 10 you to take the initiative to call them?</p> <p>11 A But when did I get the e-mail? 12 When did I check my e-mail? I'm not sure. 13 There must be some reason that I didn't 14 respond to that. It may have been after 15 the fact. I don't recall.</p> <p>16 Q According to -- just for the 17 record, it's what we produced as Bailey 18 versus Miltope Corp 00149. According to 19 that piece of paper, you were e-mailed on 20 November 11th. Do you have any reason to 21 think you didn't receive it?</p> <p>22 A No. I'm asking what day did I 23 receive it.</p>
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<p>1 Q When Gabe e-mailed you on 2 November 11th, "You need to call me or 3 Brian ASAP," why didn't you call them?</p> <p>4 A I had been e-mailing them. 5 Remember I told you that I didn't want to 6 --</p> <p>7 Q Why didn't you just write him 8 back and say, "I'm not comfortable talking 9 to you on the phone. E-mail me your 10 questions and I'll respond"?</p> <p>11 A I didn't think of that at that 12 time.</p> <p>13 Q On Tuesday, November 11th, when 14 he said that to you, that was prior to you 15 getting your termination letter, correct?</p> <p>16 A It was prior to me getting it.</p> <p>17 Q Right. So, why would you be 18 afraid to talk to Gabe on the phone at that 19 point?</p> <p>20 A I did not -- what was the --</p> <p>21 Q Let's go back. At that point 22 you thought your leave was approved, right?</p> <p>23 A Yes.</p>	<p>1 Q Well, I wouldn't know that.</p> <p>2 A That's my question. I mean, it 3 was sent on the 11th because it says that.</p> <p>4 Q Did you not check your e-mail 5 every day?</p> <p>6 A I might not have checked it. 7 That's on a Tuesday.</p> <p>8 Q According to your calendar, you 9 had returned from your Atlanta rehearsal 10 and you were tutoring Nicky and Josh that 11 day.</p> <p>12 A That's possible.</p> <p>13 Q So, wouldn't you have had time 14 to check your e-mail if that's all you were 15 doing that day?</p> <p>16 A If I was teaching that day, I 17 was at home. So, I mean --</p> <p>18 Q And you had your laptop there, 19 right?</p> <p>20 A Well, I had a home computer.</p> <p>21 Q And you could access your work 22 e-mail from your home computer, right?</p> <p>23 A No.</p>

(Pages 304 to 307)

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<p>1 Q Why didn't you just access it 2 off your laptop?</p> <p>3 A I did.</p> <p>4 Q In fact, that's what you had to 5 do to send all those e-mails you were 6 sending from home, right?</p> <p>7 A No. I could send an e-mail from 8 home, but I could not access my work e-mail 9 from my home computer.</p> <p>10 Q But you could access it from 11 your laptop?</p> <p>12 A Right.</p> <p>13 Q And you had your laptop 14 available to do that if you chose to?</p> <p>15 A I had just gotten it. I wasn't 16 real good with that laptop because -- I 17 mean, I had gone on there and -- I went on 18 there and checked some of my e-mails and 19 that kind of thing.</p> <p>20 Q Wasn't part of your job with 21 Miltope involving computer expertise to 22 manage the tracking and --</p> <p>23 A Inventory.</p>	<p>1 2003 doing Rick and Bubba's Fast Fest at 2 Oak Mountain Amphitheater?</p> <p>3 A What's that?</p> <p>4 Q It's your e-mail. It says Rick 5 and Bubba's Fast Fest at Oak Mountain 6 Amphitheater. You wrote Derrick Welsh 7 about that. Do you remember?</p> <p>8 A No, I didn't do that. There's 9 probably a lot more to it other than just 10 what you are reading. I have never done 11 anything with Rick and Bubba. It would be 12 cool, though.</p> <p>13 Q The president says those guys 14 are dog-gone funny. I heard that on the 15 radio this morning. So, you don't recall 16 that?</p> <p>17 A No. I have never done Rick and 18 Bubba. I don't have any idea. Read that 19 whole thing, and it will probably clear 20 that up.</p> <p>21 Q Do you remember a man named 22 Danny Johnson asking you to help him get a 23 job at Miltope?</p>
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<p>1 Q So, you didn't --</p> <p>2 A I'm not a technician. I was not 3 a technician.</p> <p>4 Q Prior to November you had had 5 some absences from Miltope because of 6 rehearsals with the band, correct?</p> <p>7 A There might have been one or 8 two.</p> <p>9 Q According to one of your 10 e-mails, you had a rehearsal on October 11 13th, which was a Monday. Do you remember 12 that?</p> <p>13 A I don't remember it, but yes, 14 that's possible.</p> <p>15 Q And according to company 16 records, you took a vacation day that 17 Monday, the 13th.</p> <p>18 A That's possible.</p> <p>19 Q So, you don't have any reason to 20 dispute that you actually attended a 21 rehearsal that day?</p> <p>22 A No, not at all.</p> <p>23 Q Do you recall in early October</p>	<p>1 A Yes, I do.</p> <p>2 Q Did you ever discuss with Mr. 3 Crowell Danny Johnson potentially being 4 employed there?</p> <p>5 A I don't recall if I did or not. 6 I think I had mentioned that I had -- or 7 either to Brian that I had someone that -- 8 I think Danny had gotten A Plus 9 certification for computers or something. 10 He had gone to school, and I had asked if 11 there were any openings and that kind of 12 thing. But I don't think anything ever 13 came out of that.</p> <p>14 Q Do you remember attending a 15 rehearsal for the band the weekend of 16 September 5th?</p> <p>17 A I think so.</p> <p>18 Q According to your work schedule, 19 you took a sick day on that Friday, the 20 5th, and a vacation day that Monday, the 21 8th.</p> <p>22 A (Witness nods head.)</p> <p>23 Q So, that would have been so you</p>

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<p>1 could handle the rehearsal with the band?</p> <p>2 A Right.</p> <p>3 Q Earlier you testified that there</p> <p>4 was an e-mail where you said to Brian and</p> <p>5 Gabe, "If there's anything else you need,</p> <p>6 please let me know," right? Do you</p> <p>7 remember that testimony?</p> <p>8 A Yes. That was the e-mail around</p> <p>9 the time I told them that I had requested</p> <p>10 the doctor's letter. If there was anything</p> <p>11 else he needed, let me know.</p> <p>12 Q This is the e-mail I found</p> <p>13 (indicating). Is that the e-mail that you</p> <p>14 sent?</p> <p>15 MS. LINDSAY: For the record,</p> <p>16 that's Bates stamped 152.</p> <p>17 A Right, I sent that. Yes, I</p> <p>18 remember that.</p> <p>19 Q And that was the e-mail you were</p> <p>20 referring to about following up with them</p> <p>21 to find out if there was anything else they</p> <p>22 needed?</p> <p>23 A Yes.</p>	<p>1 address that to those people?</p> <p>2 A I don't know. I don't think so.</p> <p>3 MS. LINDSAY: I think I'm</p> <p>4 probably done, but I want to look at my</p> <p>5 notes. Do you want to take a brief lunch</p> <p>6 break?</p> <p>7 MR. BLYTHE: That's fine.</p> <p>8 (Lunch break was taken)</p> <p>9 Q Mr. Bailey, we are back on the</p> <p>10 record after lunch. Is there anything that</p> <p>11 you need to say to clarify any prior</p> <p>12 answers?</p> <p>13 A Not at this time.</p> <p>14 Q I was going to ask you why Tina</p> <p>15 Howell is not listed as one of your</p> <p>16 witnesses on your initial disclosures. Do</p> <p>17 you know?</p> <p>18 A I didn't think about it until in</p> <p>19 the middle of all this. She can be added,</p> <p>20 if you like.</p> <p>21 Q Are you going to -- do you want</p> <p>22 to call her to testify if there's a trial?</p> <p>23 A I guess, yes.</p>
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<p>1 Q Was there any other</p> <p>2 communication between the 5th and the 14th?</p> <p>3 A I don't remember.</p> <p>4 Q And if there isn't a document</p> <p>5 that reflects that there was a</p> <p>6 communication, do you have any reason to</p> <p>7 believe that we are missing documents?</p> <p>8 A Between the 5th and the 14th</p> <p>9 there was communication. There was phone</p> <p>10 communication. You know, I told you on the</p> <p>11 7th that I was working with Lee. On the</p> <p>12 6th I was working with Lee. I was talking</p> <p>13 to people in Pennsylvania. But as far as</p> <p>14 is there an e-mail, I don't know.</p> <p>15 Q Let me ask a better question.</p> <p>16 What I was thinking about is in terms of</p> <p>17 you e-mailing Brian or Gabe about whether</p> <p>18 more documentation was needed. The only</p> <p>19 two e-mails I found are November 5th and</p> <p>20 November 14th.</p> <p>21 A Okay.</p> <p>22 Q So, would there be any other</p> <p>23 e-mails do you think that specifically</p>	<p>1 Q Do you know if she still works</p> <p>2 at Miltope?</p> <p>3 A I don't think she does.</p> <p>4 Q Do you know how I can reach her?</p> <p>5 A I may have a phone number for</p> <p>6 her. If I don't, I can probably get one.</p> <p>7 Q Would you provide that to your</p> <p>8 lawyer so that can be shared with me?</p> <p>9 A Sure.</p> <p>10 Q Going back to your conversation</p> <p>11 with Dee -- which I understand there was</p> <p>12 just one. Am I right?</p> <p>13 A I believe so.</p> <p>14 Q If she says that she told you</p> <p>15 that your leave would have to be approved</p> <p>16 by Brian Burkhead and Ed Crowell, would you</p> <p>17 dispute that?</p> <p>18 A No, I wouldn't dispute it. I</p> <p>19 think when the conversation was had and she</p> <p>20 told me that I would qualify, it was</p> <p>21 probably more, "Well, if everything is as</p> <p>22 you say it is, you probably qualify," that</p> <p>23 kind of thing. It was not that she was</p>

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<p style="text-align: right;">Page 312</p> <p>1 saying you can be off as of -- what date do 2 you want to be off? It wasn't set in 3 stone. She said if everything -- let me 4 rephrase this. I think she was saying if 5 the conditions were as I had said, then I 6 would qualify.</p> <p>7 Q You understood that she did not 8 have the authority to authorize the leave 9 on her own, right?</p> <p>10 A I wouldn't think so.</p> <p>11 Q You didn't think she had that 12 authority?</p> <p>13 A Well, I didn't really even think 14 about that at the time.</p> <p>15 Q Would you look back at Exhibit 16 10? I wanted to call your attention to 17 where it says, "You may be considered to 18 have resigned without notice and removed 19 from the payroll." Do you see that part of 20 the letter?</p> <p>21 A Right.</p> <p>22 Q And then he states, "Your 23 actions meet this requirement of having</p>	<p style="text-align: right;">Page 314</p> <p>1 strictly the computer back and no other 2 communication.</p> <p>3 Q My question is --</p> <p>4 A I took this as a direct 5 termination letter.</p> <p>6 Q And do you understand that the 7 word "termination" could include an ending 8 of employment that is not because you are 9 fired? Let me ask a better question.</p> <p>10 Do you understand that you, 11 yourself, can terminate your own employment 12 from a company?</p> <p>13 A I'm sure a person could.</p> <p>14 Q You've probably seen that in 15 handbooks before, that employment at-will 16 in Alabama means you can terminate or I can 17 terminate your employment with or without 18 cause at any time, right?</p> <p>19 A I'm not really up on that.</p> <p>20 Q Let me show you in the Miltope 21 handbook. It says in the last paragraph, 22 "Either the employee or Miltope may 23 terminate the employment relationship at</p>
<p style="text-align: right;">Page 313</p> <p>1 voluntarily resigned." Do you see that 2 part?</p> <p>3 A Right.</p> <p>4 Q As I understood your testimony, 5 you considered this letter to fire you; is 6 that right?</p> <p>7 A Correct.</p> <p>8 Q But you understand and agree 9 with me, don't you, that this letter states 10 that according to Miltope, you voluntarily 11 resigned? Do you understand that?</p> <p>12 A I keep reading the first line.</p> <p>13 Q Okay. So, the word "terminated" 14 is what raises a red flag for you?</p> <p>15 A Yes. And there is no mention in 16 the second paragraph of please contact me 17 to make arrangements to clarify your need 18 for leave or the leave you have requested 19 or anything. It says to return the 20 company's laptop. It makes no effort to -- 21 it didn't read very much like a request for 22 a clarification or anything. It reads as a 23 termination letter, because they want</p>	<p style="text-align: right;">Page 315</p> <p>1 any time." Do you see that in the last 2 paragraph?</p> <p>3 A Yeah, I see that.</p> <p>4 Q So, do you understand that to 5 mean that you would have the right to 6 terminate the relationship yourself?</p> <p>7 A I'm certain that that would 8 be -- according to that paragraph that that 9 would be the case.</p> <p>10 (Defendant's Exhibit 14 was marked for identification)</p> <p>11 Q Let me show you Defendant's 12 Exhibit 14. If you would, look at the 13 middle e-mail from you to Brian on November 14 17th. Do you see that?</p> <p>15 A Right.</p> <p>16 Q This appears to me to be your -- 17 to be a follow-up e-mail after you received 18 your termination letter.</p> <p>19 A Right.</p> <p>20 Q And in response to that e-mail, 21 you were asked by John Reeves to return the 22 company laptop? Is that kind of the way</p>

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1 you felt the events transpired?	1 been upset concerning you the week before
2 A No. I think that would be --	2 you went to that rehearsal?
3 according to this other e-mail that I sent	3 A I am an only child. My father
4 to Gabe on the 18th, if I responded to	4 has probably three things in his life that
5 Brian on the 17th, that means that John	5 he loves and cares about. One would be me,
6 would not have responded to me -- or John	6 one would be my daughter, and the other
7 would not have told me that yet. Because	7 would be a hundred-pound black lab. And
8 it says --	8 I'm sure that that's why he would be
9 Q Let me ask you a better	9 concerned about me.
10 question. After you sent this e-mail on	10 Q So, you are saying he would be
11 November 17th, was that when John Reeves	11 preoccupied with you regardless of what was
12 came to see you?	12 going on with you?
13 A What was the day of the week of	13 A Probably.
14 November 17th?	14 Q Have you and your dad had any
15 Q According to your e-mail, it was	15 conflicts concerning your participation in
16 a Monday.	16 the McQueen Street, Rat Race or Cold Hard
17 A Okay. I see that now. Sorry.	17 Truth bands?
18 Q That's okay.	18 A No.
19 A Maybe John did tell me -- maybe	19 MS. LINDSAY: Unless there are
20 it was over the weekend that they came down	20 other documents that come into play -- I
21 for the boat or something and he told me	21 know we talked about this before. I don't
22 that. That's possible.	22 think y'all have any other documents. But
23 Q I assume that no one responded	23 if some come to light, I would reserve the
Page 317	Page 319
1 to your questions that you asked in your	1 opportunity to ask about those. Otherwise,
2 November 17 e-mail. Is that correct?	2 I think I'm done.
3 A No.	3 EXAMINATION BY MR. BLYTHE:
4 Q I am correct?	4 Q I'll just start back when we
5 A No one responded to me. Yes,	5 were here the first time. There were a
6 you are correct.	6 couple of things that needed clarifying.
7 Q No one answered these questions?	7 On the November 29th 2003
8 A I'm trying to follow that	8 McQueen Street, was that the 19th or the
9 around.	9 29th that that was to be played, do you
10 Q Let me try to clean up the	10 recall?
11 question. No one at Miltope answered the	11 A As I said when she asked before,
12 questions you raised in your November 17th	12 I somehow thought it was the 19th, but I
13 e-mail, correct?	13 might have made a mistake. It was the
14 A Yes.	14 29th.
15 Q According to the chaplain notes	15 Q And y'all played where and when?
16 about your dad the week before your	16 A It was a place in Montgomery
17 September 5th rehearsal for the McQueen	17 called Carrera's, and we played that
18 Street show, your dad was feeling hopeless	18 Saturday. And it was from -- we had an
19 and it suggested in the note that it had to	19 itinerary which I'm sure is in these
20 do with you. Was your dad against you	20 exhibits somewhere of every place we had to
21 working with the McQueen Street band?	21 be that whole day.
22 A No, ma'am.	22 Q Was that the fundraiser for the
23 Q Do you know why he would have	23 --

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	Page 320	Page 322
1	A No.	
2	Q When you played at all with any	1 were different then. The situation was
3	of these bands, were they primarily local	2 different then.
4	or regional affairs? In other words, you	3 Q Let me interrupt you.
5	didn't have to go very far, such as Los	4 A Please do.
6	Angeles and —	5 Q When did you go to work for
7	A No. In that aspect, they would	6 Miltope the very first time?
8	be local. Because the two McQueen Street	7 A The year?
9	shows I've done, one was in Montgomery and	8 Q Yes.
10	the other was in Prattville.	9 A '96, I think.
11	Q Just let me be frank. Could you	10 Q And when did you leave working
12	support yourself by playing in a band	11 for them the very first time?
13	solely?	12 A Either early '98 or late '97.
14	A Solely?	13 Q And how long were you gone from
15	Q Yes. I mean you and your	14 Miltope?
16	family.	15 A Three and a half years.
17	A Not really.	16 Q And then you came back?
18	Q And back with the -- and I'm	17 A Right.
19	just following up on a question that	18 Q What year did you come back?
20	Heather had asked you. Imposter, was it	19 A 2001, I think.
21	ever a break-even proposition?	20 Q And then you finished with
22	A Never. It was a broke	21 Miltope I guess the date of the letter of
23	proposition.	22 termination, correct?
		23 A Yes.
	Page 321	Page 323
1	Q And you haven't made enough	1 Q That's what I was wanting to get
2	money in the music industry to really	2 to. There was some reference made earlier
3	amount to anything, maybe to pay for a set	3 in the deposition to a time sheet for the
4	of drums here and there or something like	4 week ending November 2nd 2003 and November
5	that?	5 9th 2003, and I just wanted to clarify
6	A Yeah. But that all falls back	6 this. Those are not your signatures on
7	into expenses and tools.	7 these time sheets?
8	MS. LINDSAY: I feel like I	8 A Right.
9	should object to the form of that one. To	9 Q On either one; is that correct?
10	really amount to anything is kind of harsh,	10 A Right.
11	Derrick.	11 Q I just wanted to clarify that.
12	Q Let me move on.	12 Those are actually, I believe --
13	A So now I know how you really	13 A Brian Burkhead signing my name.
14	feel.	14 Q And he initialed beside it?
15	Q Tell me just briefly what your	15 A Right.
16	work history is with Miltope, just the	16 Q He wasn't trying to conceal it.
17	dates and times that you went to work, left	17 Who is Darrell Cook, just briefly?
18	work and then came back to work.	18 A Darrell Cook is in the Miltope
19	A The first time I was with	19 information systems, MIS. I think he may
20	Miltope, I had -- sometimes I was on a	20 be the supervisor over MIS, but I'm not
21	project and I would go in to work at 6:30	21 exactly sure.
22	in the morning, and sometimes I wouldn't	22 Q Did you ever receive any
23	leave until 7:00 o'clock at night. Things	23 unemployment compensation after being